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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/960,702 | 09/24/2001 | Umrao S. Mayer | 723-1177 | 4292 |

7590 02/21/2003

NIXON & VANDERHYE P.C.
8th Floor
1100 North Glebe Road
Arlington, VA 22201-4714

EXAMINER

MARKS, CHRISTINA M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3713

DATE MAILED: 02/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,702

Applicant(s)

MAYER ET AL.

Examiner

C. Marks

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The use of the trademarks DREAMCAST (page 3, line 20), PLAYSTATION (page 4, line 1), MIDWAY (page 4, line 14), ACCLAIM (page 4, line 14) and ELECTRONIC ARTS (page 4, line 15) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6, 10-11, 15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong (US Patent No. 6,102,802).

Armstrong discloses the use of a game controller in an electronic game with a plurality of possible actions (Abstract). A method is disclosed that detects user input for requesting an animated action (Column 3, lines 26-42). An adrenaline value is then read from a control element based upon the pressure applied to a button in order to control action intensity of images displayed (Column 4, lines 35-48). Such character parameters controlled by the action intensity

could be the speed in which the character walks or runs (Column 3, lines 10-16). The pressure sensitive switch is an analog switch (Column 3, lines 1-9). The character inherently has initial action parameters defined as Armstrong discloses that the action intensity is controlled and changed by the depression of the pressure switch (Column 3, lines 10-14). The character parameter is controlled by scaling the relative position of the analog button at the time of the action requested by the player (Column 3, lines 10-17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-4 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over NHL 2001 (Electronic Arts) in view of Armstrong (US Patent No. 6,102,802).

What Armstrong discloses has been discussed above and is incorporated herein.

Armstrong discloses the method of controlling a video game for use in such a game where a player may need to walk or run based upon situation (Column 3, line 10-17). Armstrong discloses that the controller is used to control varying intensities for character performance (Column 4, line 35-48). Though Armstrong does not explicitly disclose the use of the controller in a sports game, it would be obvious to one of ordinary skill in the art to use the disclosed controller in such a game genre as it is well known that sports games are known to use situations where characters are required to perform with varying intensities as disclosed by Armstrong. Further, Armstrong also discloses that his controller is based upon the use of analog control (Abstract) and thus inherently could be used in games supporting the analog control feature.

NHL 2001 is a game that supports analog control and thus could incorporate the teachings of Armstrong wherein pressure sensitive means could be used to control the intensity of character movement. Furthermore, NHL 2001 incorporates a momentum feature based upon character movement that can further affect game play (NHL 2001, Plumb, paragraph 2).

Therefore, one of ordinary skill in the art would be motivated to apply the teachings of Armstrong to the analog controls of NHL 2001 to provide the player with better control of the character options. By doing this, the player would be given a more realistic feel of intensity control as disclosed by Armstrong and thus feel more excitement and realism from the game.

Claims 5, 7-9, 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over NBA Live 2001 (Electronic Arts) in view of Armstrong (US Patent No. 6,102,802).

What Armstrong discloses has been discussed above and is incorporated herein.

Armstrong discloses the method of controlling a video game for use in such a game where a player may need to walk or run based upon situation (Column 3, line 10-17) such as is required in basketball. Armstrong discloses that the controller is used to control varying intensities for character performance (Column 4, line 35-48). Though Armstrong does not explicitly disclose the use of the controller in a basketball game, it would be obvious to one of ordinary skill in the art to use the disclosed controller in such a game genre as it is well known that basketball games are known to use situations where characters are required to perform with varying intensities as disclosed by Armstrong. Further, Armstrong also discloses that his controller is based upon the use of analog control (Abstract) and thus inherently could be used in games supporting the analog control feature.

NBA Live 2001 discloses the use of an analog control and thus could incorporate the teachings of Armstrong wherein pressure sensitive means could be used to control the intensity of character movement. This intensity then axiomatically would affect the shooting percentage, foul percentage, and blocking percentage of the player as these are well known statistics of player performance that are based partly upon the intensity in which a player performs.

Therefore, one of ordinary skill in the art would be motivated to apply the teachings of Armstrong to the analog controls of NHL 2001 to provide the player with better control of the character options. By doing this, the player would be given a more realistic feel of intensity control as disclosed by Armstrong and thus feel more excitement and realism from the game.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6,343,991: Game controller with analog switch to control the intensity of character movement based upon the applied pressure to the switch.

Tiger Woods 99 PGA Tour Golf: Game includes the feature of Tiger Charge where the Tiger Charge is activated as the player gains momentum and allows better performance.

Sprague Psychological Momentum in Basketball: Discloses that the momentum is directly related to player performance in the game of basketball.

US Patent No. 4,302,011: Input device with the ability to sense the presence of absence of the user's finger, as well as the intensity of touch or pressure, thus adding further dimensions of control.

US Patent No. 5,790,102: Pressure sensitive computer mouse.

US Patent No. 6,190,314: Method for correlating physiological attributes and emotions of a user of an input device.

US Patent No. 6,509,848: Remote control device formed of an operating element and a pressure-sensitive resistor that outputs a signal with various levels depending on the pressing force.

US Patent No. 6,424,336: Method of controlling a two-hand held controller with an analog pressure sensor for controlling video games.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Friday (7:30AM - 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, V. Martin-Wallace can be reached on (703)-308-1148. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 for regular communications and (703)-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

cmm
cmm

February 20, 2003

Michael O'Neill
MICHAEL O'NEILL
PRIMARY EXAMINER